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DEC 07 2004

Director's Office
Office of Patent Publication

In re Application of
Keith Tanner, et al. :
Application No. 10/016,352 : DECISION ON PETITION
Filed: November 20, 2001 :
Attorney Docket No. RPS6097-US :

This is a decision on the Petition To Withdraw The Holding Of Abandonment Pursuant to 37 CFR § 1.181, received in the United States Patent and Trademark Office (USPTO) on October 5, 2004.

The petition is **DISMISSED**.

The application was held abandoned for failure to timely pay the issue fee as required in the Notice Of Allowance and Fee(s) Due, mailed May 17, 2004, which set a three (3) month statutory period for reply. Accordingly, the Notice of Abandonment was mailed on September 24, 2004.

Petitioner states that the issue fee was filed via express mail on August 16, 2004. In support of this assertion petitioner has submitted herewith a copy of the Express Mail mailing label, post card, Part B – Fee(s) Transmittal, Notice of Allowability and the Examiners, Reason For Allowance. Also, a Statement In Support Of Petition To Withdraw Holding Of Abandonment — Declaration of Jennifer Warner—was received.

In order for a petition to be granted, the evidence must be sufficient according to one of the following standards:

- MPEP 503 (postcard receipt as prima facie evidence)
- Certificate of Mailing under 37 CFR 1.8(b)
- "Express Mail" Mailing under 37 CFR 1.10

MPEP 503 **Return Postcard** is not applicable since there's no evidence that the postcard was returned with the "Office Date" stamp receipt thereon. *See MPEP 505*

Provisions under 37 CFR 1.8(b) requires that petitioner (1) promptly inform the Office of the previous timely mailing or transmission after becoming aware that the Office has no evidence of receipt of the correspondence, (2) supply copies of the previously mailed correspondence with certificate of mailing thereon, and (3) include a statement which attests to the previous timely mailing.

Petitioner doesn't fully satisfy requirement (2) in that, the date indicated on the Certificate of Mailing of October 5, 2004, is after the date due for paying the required fee(s). The applicant crossed out the date of August 16, 2004.

With respect to the submission under 37 CFR 1.10 **Express Mail** requires that the petitioner (1) promptly file the petition after becoming aware that the Office has no evidence of receipt of the correspondence, (2) the number of the "Express Mail" mailing label was placed on the paper(s) or fee(s), (3) includes a copy of the originally deposited papers(s) or fee(s) showing the number of the "Express Mail" mailing label thereon, copy of the returned postcard receipt, copy of the "Express Mail" mailing label showing the "date in" and (3) includes a statement from the person who actually did the mailing.

Petitioner doesn't satisfy requirement (2) in that, the copy of the correspondence—Part B – Fee(s) Transmittal—doesn't include the number of the "Express Mail" mailing label, and the copy of the "Express Mail" mailing label doesn't show the "date-in".

The petitioner should consider petitioning as follows:

File a petition for Revival of Abandoned Application under CFR § 1.137 (a) or (b). The new rule change appears in 62 Federal Regulations, October 10, 1997 or 1203 of the Official Gazette 63, October 21, 1997, 65 FR 57057, Sept. 20, 2000, 68 FR 14332, Mar. 25, 2003, 69 FR 56481, Sept. 21, 2004.

- Under 37 CFR 1.137(a), a petition for the revival of an *unavoidably abandoned* application must be accompanied by the following:

(1) The individual letter to the Office action or notice and so on is filed

- Under 37 CFR 1.137(b), a petition for the revival of an *unintentionally abandoned* application must be accompanied by the following:

- (1) The required reply to the outstanding Office action or notice, unless previously filed;
- (2) The petition fee as set forth in § 1.17(m);
- (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Director may require additional information where there is a question whether the delay was unintentional;
- (4) Any terminal disclaimer (and fee as set forth in § 1.20(d) required pursuant to paragraph (c) of this section.

Further correspondence with respect to the petition for revival under 37 CFR 1.137 should be directed to the Office Of Petition at 703-305-9282 or addressed as follows:

By mail: Mail Stop Petitions
 Commissioner for Patents
 P O Box 1450
 Alexandria, VA 22313-1450

Telephone inquiries concerning this matter may be directed to the Office of Petitions at 703-305-9282.



Thomas E. Hawkins
Paralegal Specialist
Office of the Director